

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

AMOS COLE, JR.

Claimant

VS.

IBP, INC.

Respondent

Self-Insured

)
)
)
)
)
)
)

Docket No. 202,154

ORDER

Claimant appeals from a preliminary hearing Order entered by Administrative Law Judge Floyd V. Palmer dated August 29, 1995, denying medical benefits in the above-captioned matter. As Board Member Gary M. Korte has disqualified himself from participating in this proceeding, Member Pro Tem Jeff Cooper has been appointed to participate in this decision pursuant to K.S.A. 1995 Supp. 44-555c(i).

ISSUES

Whether the claimant sustained his burden of proof that he suffered accidental injury arising out and in the course of his employment with respondent entitling him to receive medical treatment pursuant to K.S.A. 44-510.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the evidence presented and for purposes of preliminary hearing, the Appeals Board finds as follows:

Claimant alleges personal injury by accident resulting from work activities performed for respondent on Friday, April 14, 1995. Claimant alleges the injury was reported to IBP Personnel on April 17, 1995. The evidence does not disclose that any particular incident occurred on April 14, 1995, other than performing his usual and customary work for the respondent. On April 16, 1995, the claimant drove from Emporia to Columbia, Missouri and back. At the conclusion of his trip, claimant testified he felt a shooting pain through his hip and legs causing him to fall to the ground while carrying his 20-month-old son up steps to their apartment. Claimant acknowledges that the pain he felt while carrying his son was more severe than the pain he had suffered while working two days prior to his fall.

On April 18, 1995, the claimant signed a document which clearly indicates that the medical problems for which he requested to be seen by a doctor did not arise out of a work-related injury or illness (Respondent's Ex. A, Preliminary Hearing).

It is well established that whether an accidental injury arises out of and in the course of the worker's employment is a question of fact that must be decided on a case-by-case basis. Messenger v. Sage Drilling Co., 9 Kan. App.2d 435, 680 P.2d 556, rev. denied 235 Kan. 1042 (1984).

Based on the current record and for preliminary purposes, the Appeals Board finds that claimant has failed to meet his burden of proof in establishing that he suffered personal injury by accident arising out of and in the course of his employment.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Floyd V. Palmer, dated August 29, 1995, is hereby affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of March 1996.

BOARD MEMBER PRO TEM _____

BOARD MEMBER _____

BOARD MEMBER _____

c: Derek R. Chappell, Ottawa, KS
Gregory D. Worth, Lenexa, KS
Jeff C. Cooper, Topeka, KS
Floyd V. Palmer, Administrative Law Judge
Philip S. Harness, Director